***IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH***

***Criminal Revision No. 1801 of 2005***
***Date of Decision:April 22, 2010***

***Megha and others .....Petitioners***

***Versus***

***State of Haryana .....Respondent***

***Coram: Hon'ble Mrs. Justice Sabina***

***Present:*** Mr.J.P.Dhull, Advocate for the petitioners.

Mr.Satyavir Singh, Deputy Advocate General Haryana.

**

***Sabina, J.***

Petitioners were convicted for an offence under Sections 326,323 read with Section 34 of the Indian Penal Code (`IPC' for short) vide judgment dated 2.12.2003 by the Additional Chief Judicial Magistrate Kaithal. Vide order of even date, petitioners were sentenced to undergo rigorous imprisonment for a period of two years under Section 326/34 IPC with a fine of Rs.2000/- each. Petitioners were also sentenced to undergo rigorous imprisonment for a period of six months under Section 323/34 IPC. Both the sentences were ordered to run concurrently. Aggrieved by the

same, petitioners preferred an appeal and the same was dismissed by Additional Sessions Judge (I) Kaithal vide judgment dated 8.9.2005 . Hence, the present revision petition.

The brief facts of the case, as noticed by the Appellate Court in para 2 of its judgment, are as under:-

> "2. Facts giving rise to the prosecution case are as under:- That on the statement of Ram Sarup son of Jai Dayal complainant, Ex.PA, this case was registered. It was stated by the complainant that his father was owning 9 ¾ killas of the land. Complainant are three brothers. The aforesaid land was divided amongst all the three brothers in equal shares. It was also stated by the complainant that all the three brothers had given 1¾ killas of land from their shares to their mother. It was also averred that their father Jai Dayal had purchased 3/4killas of land about 14 years ago. The entire land was divided amongst three brothers in equal shares. It is allegation that his brother Megha and his wife Bimla had cut grass from the land of the share of the complainant. Complainant hsad gone to the house of Megha for lodging protest. At this, Megha started calling bad names to complainant. Complainant had forbidden him from doing so. In the meanwhile, Megha's wife namely Bimal caught hold of complainant and Megha attacked on the nose of the complainant with Daranti. As a result, the lower front portion of the nose of the complainant was chopped off. In the meanwhile complainant's brother Ram Dia also came there, he also gave a lathi blow on the right side of head of complainant. Complainant raised alarm by shouting Mar Diya,

Mar Diya which attracted Sultan Singh son of Mukhtiar Singh resident of Dadupur. Sultan Singh is complainant's wife's sister's husband (Sadu). He could save complainant from the clutches of the accused. It was also stated by complainant that the occurrence had taken place on 5.9.1994 at 8.00 AM."

During the course of arguments, learned counsel for the petitioners, has not challenged the conviction of the petitioners under Sections 326,323 read with Section 34 IPC but has submitted that the sentence qua imprisonment be reduced to already undergone by the petitioners. Learned counsel has submitted that petitioners No.1 and 3 were real brothers of injured- Ram Sarup and petitioner No.2 is the wife of petitioner No.1. Petitioners are facing criminal proceedings since the year 1994. The occurrence had taken place on the spur of the moment. Thereafter, the parties have been residing peacefully. Learned counsel has further submitted that the fine imposed by the Courts below has already been deposited by the petitioners.

As per the custody certificate placed on record, petitioner No.1 has undergone 5 months and 22 days of actual sentence,whereas, petitioner No.3 has undergone 3 months and 7 days of actual sentence. Petitioner No.2 has undergone 2 months and 22 days of actual sentence.

Accordingly, keeping in view the submissions made by the learned counsel for the petitioners, it is a fit case where the sentence qua imprisonment is liable to be reduced to already undergone by the petitioners but the sentence qua fine is liable to be enhanced.

Hence, the conviction of the petitioners under Sections 326,323 read with Section 34 IPC is maintained. However, the sentence

qua the imprisonment of the petitioners is reduced to already undergone by them. However, petitioners No. 1 and 3 are directed to pay additional fine of Rs. 20,000/- each, whereas, petitioner No.2 is directed to pay additional fine of Rs. 10,000/-. Additional fine be deposited before the trial Court within two months from today by the petitioners failing which this petition shall stand dismissed. The additional fine paid by the petitioners be disbursed to the injured- Ram Sarup forthwith.

Petition stands disposed of accordingly.

**(Sabina)**
**Judge**

**April 22, 2010**
arya